UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

WAI OLA ALLIANCE, A PUBLIC INTEREST ASSOCIATION, ET AL. Plaintiffs, vs. UNITED STATES DEPARTMENT OF THE NAVY, UNITED STATES DEPARTMENT OF DEFENSE, JOINT TASK FORCE RED HILL, UNITED STATES NAVY REGION HAWAII, UNITED STATES NAVY FACILITIES ENGINEERING COMMAND - HAWAII, Defendants.	CIV. NO. 22-00272 LEK-RT

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The instant matter involves Clean Water Act claims for the release of fuel into bodies of freshwater on O`ahu. Here, Plaintiffs[1] seek partial summary judgment on liability for

[1] The plaintiffs are: Wai Ola Alliance ("the Alliance"); and individual members of the Alliance, Mary Maxine Kahaulelio, Clarence Ku Ching, Melodie Aduja, Kim Coco Iwamoto, Peter Doktor, Steven Hanaloa Helelā, Kalamaokaaina Niheu, Dr. Lynette Hiilani Cruz, James J. Rodrigues, and Jade Mahina Frank (collectively "the Individual Plaintiffs" and all collectively "Plaintiffs"). [Third Amended Complaint for Declaratory Relief and Injunctive Relief, filed 6/13/24 (dkt. no. 130) ("Third Amended Complaint"), at pgs. 10-16.] "The Alliance is a community-based organization composed of environmentally and culturally focused individuals and organizations dedicated to protecting the waters of Hawai`i from the effects of past and ongoing releases, discharges, and disposal of petroleum

(. . . continued)

unpermitted waste discharges from two locations controlled by Defendant United States Department of the Navy ("the Navy"). [Pltfs.' Motion for Partial Summary Judgment ("Plaintiffs' Motion"), filed 4/25/25 (dkt. no. 177).] Defendants[2] contend that Plaintiffs lack standing and that their claims fail because they have not proven either ongoing discharge or likelihood of recurrence, and Defendants assert therefore that Plaintiffs' Motion must be denied. [Defs.' Opposition to Plaintiffs' Motion for Partial Summary Judgment ("Defendants' Opposition"), filed 5/30/25 (dkt. no. 193).] As follows, Plaintiffs' Motion is granted insofar as this Court concludes that the Alliance and the Individual Plaintiffs who submitted declarations in support of Plaintiffs' Motion have standing to pursue the Clean Water Act claim in this case. Plaintiffs' Motion is denied in all other respects.

BACKGROUND

The crux of the instant case is Plaintiffs' allegation that the Navy's operation of the Facility "has and will continue to present imminent and substantial endangerment to health and

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pollutants from [the] Red Hill [Bulk Fuel Storage Facility ('the Facility')] . . . ." [Id. at ¶ 39.]

[2] The defendants are the Navy and Defendants Joint Task Force Red Hill, United States Navy Region Hawaii, and United States Navy Facilities Engineering Command – Hawaii (collectively "Defendants"). [Third Amended Complaint at ¶¶ 50-63.]

the environment through historic, existing, and impending contamination of the irreplaceable Southern O`ahu Basal Aquifer (the 'Aquifer')." [Third Amended Complaint at ¶ 6.] Plaintiffs allege the Navy is engaging in conduct that constitutes: "a. significant ongoing violations of the Federal Water Pollution Control Act ('Clean Water Act' [or 'CWA']) 33 U.S.C. § 1251, *et seq.*; and b. significant ongoing violations of the Resource Conservation and Recovery Act ('RCRA'), 42 U.S.C. § 6901, *et seq.*" [Third Amended Complaint at ¶ 2.] Plaintiffs' RCRA claim is currently stayed. See order, filed 5/14/24 (dkt. no. 127) ("5/14/24 Order"), at 29.[3]

Plaintiffs' Motion seeks a summary judgment ruling that the Navy is liable "for 543 violations and 543 days of violations of Section 1311 of the Clean Water Act" ("the Self-Reported Violations"). [Pltfs.' Motion at 4.] If Plaintiffs' Motion is granted, it would leave for trial the issues of

[3] The 5/14/24 Order is also available at 734 F. Supp. 3d 1034. The 5/14/24 Order addressed the Second Amended Complaint for Declaratory Relief and Injunctive Relief, [filed 10/13/23 (dkt. no. 89),] and the stay was ordered for one year after Plaintiffs filed the third amended complaint. 734 F. Supp. 3d at 1038, 1049. Based on the June 13, 2024 filing of the Third Amended Complaint, the stay was to expire on June 13, 2025. On May 16, 2025, an entering order was issued extending the stay to December 12, 2025. [Dkt. no. 181.] A further hearing on Defendants' request to extend the stay to June 13, 2026 is scheduled for September 23, 2025. See Minutes, filed 7/11/25 (dkt. no. 213).

whether there were other CWA violations and the appropriate remedies. [Id., Mem. in Supp. at 10-11.]

I. Undisputed Facts

The following facts are undisputed. The Facility is a petroleum storage and conveyance system that is owned by the Navy. The Facility includes Hotel Pier, Kilo Pier, Sierra Pier, Mike Pier and Bravo Pier (collectively "the Piers"). The Navy Supply Systems Command Fleet Logistics Center operates the Facility. [Plaintiffs' Concise Statement of Material Facts in Support of Motion for Partial Summary Judgment, filed 4/25/25 (dkt. no. 178) ("Pltfs.' Motion CSOF"), at ¶¶ 2-3; Defendants' Concise Statement of Material Facts, filed 5/30/25 (dkt. no. 194) ("Defs.' Opp. CSOF"), at ¶¶ 2-3 (admitting Pltfs.' ¶¶ 2 and 3).] Pipes from the upper tank farm and an underground pumphouse extend to the Piers.[4] [Pltfs.' Motion CSOF at ¶ 6; Defs.' Opp. CSOF at ¶ 6.]

A. Hotel Pier

Hotel Pier is bordered by Pearl Harbor (which is also known as Pu`uloa) and Hālawa Stream, both of which are navigable

[4] Plaintiffs refer to the Facility's twenty bulk fuel underground storage tanks ("USTs") and the associated piping as "Upper Red Hill," and they refer to the Piers and the above-ground tanks, valves, pipes, venting, and other equipment that are used to convey petroleum to vessels as "Lower Red Hill." See Pltfs.' Motion, Mem. in Supp. at 11-12. Lower Red Hill is the focus of Plaintiffs' CWA claim and Plaintiffs' Motion. [Id. at 13.]

waters that are considered Waters of the United States for purposes of the CWA. See Pltfs.' Motion CSOF at ¶¶ 4-5, 7; Defs.' Opp. CSOF at ¶¶ 4-5, 7. Hotel Pier was built after World War II and, since then, Hotel Pier has been used for fueling and defueling. Hotel Pier is currently used to send and receive various types of fuel to vessels. [Pltfs.' Motion CSOF at ¶¶ 8-9; Defs.' Opp. CSOF at ¶¶ 8-9.]

On March 17, 2020 and June 2, 2020, the Navy reported to the State of Hawai`i Department of Health ("DOH") releases of oil from Hotel Pier area into Pu`uloa and Hālawa Stream. See Pltfs.' Motion CSOF at ¶¶ 15-16; Defs.' Opp. CSOF at ¶¶ 15-16 (disputing Plaintiffs' statements of fact only as to Plaintiffs' characterization of the Navy's report as concerning "discharges of petroleum").[5] Based on a failed leak test in January 2021, the Navy reported that the likely cause of the Hotel Pier discharge was a multi-product defuel line. [Pltfs.' Motion CSOF at ¶ 17; Defs.' Opp. CSOF at ¶ 17.] In a February 4, 2021 email, Naval Captain James G. Meyer ("Captain Meyer") confirmed that the fuel was still being released into the water at Pu`uloa.[6] See Pltfs.' Motion CSOF at ¶ 18; Defs.' Opp. CSOF at ¶ 18.

[5] For purposes of Plaintiffs' Motion, where Defendants only dispute one of Plaintiffs' statements of fact as to the manner in which Plaintiffs characterize or describe an event, that statement of fact is considered to be admitted.

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The Navy's efforts to address the release included the installation of booming at and around Hotel Pier to collect oil on the surface of the water and the deployment of divers to repair the Hotel Pier seawall.[7] See Pltfs.' Motion CSOF at ¶ 19; Defs.' Opp. CSOF at ¶ 19 (disputing other portions of Plaintiffs' ¶ 19). The Navy also installed observation wells to assist in the identification of the source of the release and to remove any free product before it reached Pu`uloa. [Pltfs.' Motion CSOF at ¶ 20; Defs.' Opp. CSOF at ¶ 20.] By August 2, 2021, the Navy had dug interception trenches that were intended to prevent free product from reaching Pu`uloa. [Pltfs.' Motion CSOF at ¶ 22; Defs.' Opp. CSOF at ¶ 22.]

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[6] Captain Meyer's February 4, 2021 email stated:

> We have a relatively significant amount of fuel being released into the water at Pearl Harbor daily. Some of the fuel is from historic old releases already in the ground; however, tests of the leaking fuel **indicate it could be from an active fuel line**. FLC has done some pressure tests, most have passed, but the fidelity of the tests can rule out a slow ongoing release. **This release into the harbor is not only an environmental concern but also a concern as it relates to the Red Hill fuel system.**

[Pltfs.' CSOF, Exh. L (emails dated 2/4/21 and 2/5/21 between various Navy personnel) at RH004086 (emphases added).]

[7] The seawall is a sheet-pile seawall that was deteriorating and allowing free product to migrate into the harbor. See Pltfs.' Motion CSOF, Exh. K (Quarterly Release Response Report – Hotel Pier, dated Jan. 2022 ("Jan. 2022 Quarterly Report")) at NAVY_0041570.

From September 25 to December 9, 2021, the Navy collected approximately one gallon of petroleum products per week from the surface of the water within the boom system, but no fuel was recovered from that area after the week of September 3, 2021. [Pltfs.' Motion CSOF at ¶ 24; Defs.' Opp. CSOF at ¶ 24.]

As of November 2021, the Navy had not delineated the subsurface petroleum plume at Pu`uloa. [Pltfs.' Motion CSOF at ¶ 23; Defs.' Opp. CSOF at ¶ 23 (admitting that portion of Plaintiffs' ¶ 23).]

According to the Navy, as of January 2022, observation wells near Hotel Pier were collecting approximately one gallon of oil product per week. The active collection was ongoing when this action was filed on June 14, 2022. As of May 23, 2023, the Navy was still collecting petroleum free product from the observation wells. [Pltfs.' Motion CSOF at ¶¶ 26-28; Defs.' Opp. CSOF at ¶¶ 26-28.]

A quarterly report regarding the response to the fuel release at Hotel Pier stated that fuel product was measured at one observation well (OW3), which is adjacent to Hālawa Stream, during the January 2024 and February 2024 monitoring events. [Pltfs.' Motion CSOF at ¶ 29; Defs.' Opp. CSOF at ¶ 29.]

Hotel Pier is currently in use. [Pltfs.' Motion CSOF at ¶ 38; Defs.' Opp. CSOF at ¶ 38.]

B. Kilo Pier

Kilo Pier is located in Pu`uloa. [Pltfs.' Motion CSOF at ¶ 10; Defs.' Opp. CSOF at ¶ 10.] On July 16, 2021, the Navy reported to DOH a release of petroleum from a pipeline into Pu`uloa at Kilo Pier. From July 16, 2021 to July 23, 2021, 150 gallons of fuel were released from Kilo Pier. The source of the release was a corroded fuel pipe at Kilo Pier. [Pltfs.' Motion CSOF at ¶¶ 30-32; Defs.' Opp. CSOF at ¶¶ 30-32.]

Kilo Pier's pipelines have been isolated, drained, and out of service since July 2021. [Pltfs.' Motion CSOF at ¶ 36; Defs.' Opp. CSOF at ¶ 36 (disputing other portions of Plaintiffs' ¶ 36).] However, the Navy plans to re-open Kilo Pier for fueling and defueling vessels after the system has been repaired. [Pltfs.' Motion CSOF at ¶ 37; Defs.' Opp. CSOF at ¶ 37.]

C. Mike, Bravo, and Sierra Piers

A portion of Sierra Pier is currently in use. [Pltfs.' Motion CSOF at ¶ 38; Defs.' Opp. CSOF at ¶ 38).] Mike Pier and Bravo Pier are not currently in use, but the Navy plans to re-open them for fueling and defueling vessels after the system has been repaired. [Pltfs.' Motion CSOF at ¶ 37; Defs.' Opp. CSOF at ¶ 37.]

II. Evidence Presented by the Parties

Shortly after the June 2, 2020 report of the release from Hotel Pier, the Navy stated the likely source was a pipeline that runs perpendicular to the Hotel Pier seawall, but in September 2020 it was shown that the pipeline was not the source because the release continued after the pipeline was closed. That month, the release rate was estimated to be approximately twenty gallons per day. See Pltfs.' CSOF, Exh. C (Final Hotel Pier Plume Delineation Pearl Harbor Naval Supply Center report, dated November 2021, by AECOM Technical Services Inc. ("AECOM Report")) at NAVY_0042017. After the defuel line was identified as the source,[8] the booming installed at Hotel Pier to contain surface water contamination was not properly secured, and oil sheen escaped. [Id., Exh. K (Jan. 2022 Quarterly Report) at NAVY_0041570; id., Declaration of Daniel Cooper in Support of Pltfs.' Motion for Partial Summary Judgment ("Cooper Decl."), Exh. 2 (emails from James Saul, CNRH NOSC Representative, NAVFAC HI, to Sherri Eng and others, dated 2/1/21 and 2/2/21) at 1 (noting boom issues and sheen escaping)).]

[8] The defuel line that has been identified as the source of the release to Pu`uloa that gave rise to this case is a subsurface petroleum pipeline from Valve Station 3 ("VS-3") to VS-1C ("the Defuel Line"). See Pltfs.' Motion CSOF, Exh. C (AECOM Report) at NAVY_0042018; id., Exh. J (email dated 1/27/21 from Trent Kalp to Captain Meyer and others ("1/27/21 Email")).

Even after the Defuel Line was identified as the likely source of the 2020 releases from Hotel Pier into Pu`uloa, the source of the non-aqueous-phase liquid ("NAPL") release to Pu`uloa and Hālawa Stream remained unknown. [Id., Exh. C (AECOM Report) at NAVY_0042012, NAVY_0042018).]

Plaintiffs argue that, in spite of a history of spills at the Facility, the maintenance at Upper Red Hill and Lower Red Hill has been poor, and there are pervasive problems, including corrosion, that threaten the integrity of the Facility's storage and conveyance systems. See Pltfs.' Motion, Mem. in Supp. at 18-19; see also Pltfs.' Motion CSOF, Exh. B (excerpts of Final Assessment Report by Simpson Gumpertz Heger Inc., dated 4/29/22 ("SGH Report")) at 57-59, 120-26, 134-64); Cooper Decl., Exh. 3 (Final Pigging Completion Report, dated Sept. 2016 by CB&I Federal Services LLC ("CBI&I Report")) at 2, 8).[9] Plaintiffs argue the SGH audit, which was performed in April 2022 before defueling, confirmed earlier findings by the DOH. Plaintiffs also argue the SGH audit shows that the discharges at Hotel Pier and Kilo Pier reflect system-wide operational and maintenance problems at Lower Red Hill. See Pltfs.' Motion, Mem. in Supp. at 19; Pltfs.' CSOF, Exh. B (SGH Report) at iv & App'x A.1 (Site

[9] "PIG" refers to the "pipeline inspection gauge" method. See Pltfs.' CSOF, Exh. J (1/27/21 Email) at PageID.3899.

Visit Observations and Recommendations (Sorted by Location)) at 1-34)).

Defendants present evidence that the Defuel Line has been inactive since January 2021, and the Navy plans to permanently decommission it. [Defs.' CSOF, Declaration of Paul Cirino ("Cirino Decl."), Exh. 8 (excerpts of trans. of Oral Deposition of Dr. William James Rogers, taken 4/24/25 ("Rogers Depo.")) at 71-72.]

The Navy also took Kilo Pier out of service in 2021, and thus it is not currently a backup for Hotel Pier. See Cirino Decl., Exh. 1 (excerpts of trans. of Deposition of Guy Pasco 30(b)(6), taken 12/10/24 ("Pasco Depo.")) at 16-18.

Defendants present the expert report of Paul B. Summers, P.E., S.E., F.ASCE, of SGH ("Summers"). [Id., Exh. 10 (Expert Report Fuel System Integrity Joint Base Pearl Harbor-Hickam Hawaii, dated 1/24/25 ("Summers Report")).] Based on his review, which included approximately twenty site visits to the Facility over three years, Summers opines that there are no fuel discharges currently occurring, and future discharges are not reasonably likely to occur.[10] [Id. at 17.]

[10] Summers assessed the structural integrity of the Facility; he did not consider its operations, procedures, nor the training of Facility personnel. [Cirino Decl., Exh. 10 (Summers Report) at 18.]

Defendants also obtained the Expert Report of Ted Caudill, PE, dated January 24, 2025 ("Caudill Report"). See Pltfs.' CSOF, Exh. AA (Caudill Report). Ted Caudill, PE ("Caudill") has been working as a contractor with Joint Base Pearl Harbor-Hickam ("JBPHH") as the Chief Engineer of the Fuels Department since 2022. [Id. at 2.] Caudill opines that there is no ongoing release of fuel products into Pu`uloa and Hālawa Stream, and future occurrences are not reasonably likely to occur.[11] [Id. at 7.] According to Claudill, there is a residual risk of future fuel releases, but the risk is "negligible, and the safety measures in place effectively reduce the likelihood and impact of any such event to the greatest extent practicable." [Id.]

DISCUSSION

I. Standing

This Court turns first to Defendants' argument that Plaintiffs' Motion must be denied because Plaintiffs have not established that the Alliance's members have standing to pursue a claim based on the Self-Reported Violations. Defendants emphasize that Plaintiffs only present declarations from four of the ten Individual Plaintiffs, and those declarations do not

[11] Caudill's opinion addresses the reliability of JBPHH's fuel system operations; it does not address the mechanical integrity of the system. [Pltfs.' CSOF, Exh. AA (Claudill Report) at 7.]

identify any injuries attributable to the Self-Reported Violations. See Defs.' Opp. at 19.

> "The fundamentals of standing are well-known and firmly rooted in American constitutional law." FDA v. All. for Hippocratic Med., 602 U.S. 367, 380, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024). Most basic among those principles is that a case or controversy must include an injury-in-fact, caused by the defendant's acts, that likely would be redressed by the requested judicial relief. Id. Further, these conditions "must remain extant at all stages of review, not merely at the time the complaint is filed." Decker v. Nw. Env't Def. Ctr., 568 U.S. 597, 609, 133 S. Ct. 1326, 185 L. Ed. 2d 447 (2013) (simplified). Take redressability. "[W]hen it is impossible for a court to grant any effectual relief whatever to the prevailing party[,]" there is nothing left for the court to do and the "case becomes moot." Id. at 609, 133 S. Ct. 1326 (simplified). . . .

Coastal Env't Rts. Found. v. Naples Rest. Grp., LLC, 115 F.4th 1217, 1221 (9th Cir. 2024) (brackets in Coastal Env't Rts.).

> An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977).

Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc. ("Laidlaw"), 528 U.S. 167, 181 (2000). The focus of the standing inquiry is on the injury to the plaintiff, not the injury to the environment. Id. "[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area

and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." Id. at 183 (some citations omitted) (quoting Sierra Club v. Morton, 405 U.S. 727, 735 (1972)). In Laidlaw, the United States Supreme Court held that

> the affidavits and testimony presented by [the organizational plaintiffs] in this case assert that [Defendant-Respondent] Laidlaw [Environmental Services (TOC), Inc.'s ("Laidlaw")] discharges, and the affiant members' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in [Lujan v.] National Wildlife Federation. [497 U.S. 871,] 888 [(1990)]. Nor can the affiants' conditional statements — that they would use the nearby North Tyger River for recreation if Laidlaw were not discharging pollutants into it — be equated with the speculative "'some day' intentions" to visit endangered species halfway around the world that we held insufficient to show injury in fact in [Lujan v.] Defenders of Wildlife. 504 U.S. [555,] 564 [(1992)].

Id. at 183–84. In National Wildlife Federation, the record was insufficient to establish standing because the plaintiff presented the testimony of only one of its members, and that testimony did not identify a specific portion of the millions of acres at issue in the case, nor did it establish that the area the member used was the location of either prior mining activity or probable future mining activity. See id. at 183 (quoting Nat'l Wildlife Fed'n, 497 U.S. at 889).

In contrast, in Laidlaw, the record at the time of the defendant's motion for summary judgment included more than ten exhibits with testimony by members of the three organizational plaintiffs, and the Supreme Court noted that other affidavits had been submitted in support of an earlier motion seeking a preliminary injunction. See id. at 176-77. The Supreme Court specifically noted that

> [Plaintiff-Petitioner Friends of the Earth, Inc. ("FOE")] member Kenneth Lee Curtis averred in affidavits that he lived a half-mile from Laidlaw's facility; that he occasionally drove over the North Tyger River, and that it looked and smelled polluted; and that he would like to fish, camp, swim, and picnic in and near the river between 3 and 15 miles downstream from the facility, as he did when he was a teenager, but would not do so because he was concerned that the water was polluted by Laidlaw's discharges. Curtis reaffirmed these statements in extensive deposition testimony. For example, he testified that he would like to fish in the river at a specific spot he used as a boy, but that he would not do so now because of his concerns about Laidlaw's discharges.

Id. at 181-82 (citations omitted). The Supreme Court stated, "[o]ther members presented evidence to similar effect," and it briefly discussed the testimony of three members of Plaintiff-Petitioner Citizens Local Environmental Action Network, Inc., another FOE member, and a member of Plaintiff-Petitioner Sierra Club. Id. at 182-83. The Supreme Court held that this testimony established an injury in fact because it was "entirely reasonable" that "a company's continuous and pervasive illegal

discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms." See id. at 184-85.

In the instant case, the declarations contain testimony similar to the testimony that the Supreme Court held was sufficient to establish standing in Laidlaw. For example, Plaintiff Pete Doktor ("Doktor") lives approximately one mile away from the Facility. [Pltfs.' CSOF, Exh. D (Standing Declaration of Peter Doktor in Support of Plaintiffs' Motion for Partial Summary Judgment) ("Doktor Decl.") at ¶ 4.] The water used in his home comes from the Aquifer, which is being impacted by the petroleum spills at Pu`uloa. See id. at ¶ 7. Doktor describes experiencing trauma and fear for his family and community because of the fuel releases at the Facility and the contamination of the Aquifer. See id. ¶¶ 14-19. Between 2020 and 2022, Doktor experienced the onset of depression, the causes of which included the Red Hill crisis and the unsatisfactory military response. [Id. at ¶ 22.] Doktor also states that he observes Pu`uloa regularly, such as when he goes hiking. When he sees Pu`uloa, he is saddened and disgusted by the contamination caused by the Navy. Doktor enjoys Pu`uloa less because of the sight and smell of pollution. He would use and enjoy Pu`uloa more, such as by kayaking, swimming, and fishing with his child,

were it not for its contamination by the Navy. [Id. at ¶¶ 25-27.]

Plaintiff Steven Hanaloa Helelā ("Helelā") has personal and ancestral ties to the Hālawa ahupua`a, which is the primary site of the contamination caused by the Facility. See Pltfs.' CSOF, Exh. E (Standing Declaration of Steven Hanaloa Helelā in Support of Plaintiffs' Motion for Partial Summary Judgment) ("Helelā Decl.") at ¶¶ 8-10. For more than thirty years, Helelā has worked to restore the native ecosystem and various cultural and ceremonial practices in the Hālawa ahupua`a. [Id. at ¶ 13.] Helelā states the Navy's discharges of pollutants from the Facility have caused him "to suffer noneconomic injuries including but not limited to cultural, religious, aesthetic and recreational harms." [Id. at ¶ 14.] Helelā is unable to engage in traditional and customary cultural practices at in the Hālawa ahupua`a, and the desecration of the affected lands and sacred waters have imposed burdens upon him and caused him to suffer sadness, grief, and depression. See id. at ¶¶ 16, 19. Helelā also fears developing cancer or other chronic illnesses because of exposure to contamination in the Aquifer from the recent spills and/or prior spills. [Id. at ¶ 30.]

Plaintiff Jade Frank and Plaintiff Kalamaoka`aina Niheu provide similar testimony to the testimony of Doktor and

Helelā. See Pltfs.' CSOF, Exh. F (Declaration of Jade Frank in Support of Motion for Partial Summary Judgment) ("Frank Decl.") at ¶¶ 3-5, 9-16; id., Exh. G (Declaration of Kalamaoka`aina Niheu in Support of Motion for Partial Summary Judgment) ("Niheu Decl.") at ¶¶ 4-6, 10, 17-21, 24-28, 32-33.

Defendants appear to argue that the Motion should be denied because there is no evidence that any plaintiff has standing to pursue a CWA claim based on the Self-Reported Violations. See Defs.' Opp. at 19. Defendants' argument is misplaced.

> "[S]tanding is not dispensed in gross," Lewis v. Casey, 518 U.S. 343, 358 n.6, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996), so "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought," Davis v. Fed. Election Comm'n, 554 U.S. 724, 734, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008) (cleaned up). We therefore analyze separately whether [the plaintiffs] established Article III organizational standing to pursue the discharge and procedural allegations.

Inland Empire Waterkeeper v. Corona Clay Co., 17 F.4th 825, 831-32 (9th Cir. 2021) (alteration in Inland Empire). Inland Empire was a CWA citizen suit, and the plaintiff nonprofit organizations alleged both the illegal discharge of pollutants into navigable waters of the United States and violations of the monitoring and reporting requirements in the defendant's permit. Id. at 829-30. Nothing in Inland Empire suggests that the plaintiffs were required to establish standing for **each**

discharge within the discharge allegations of their CWA claim. Defendants have not cited any binding authority that imposes such a standing requirement, nor is this Court aware of any. This Court therefore rejects Defendants' argument that, to prevail on Plaintiffs' Motion, Plaintiffs must present evidence of standing specific to the Self-Reported Violations.

Plaintiffs have presented evidence of the Navy's fuel discharges, and Plaintiffs have presented evidence from Doktor, Helelā, Frank, and Niheu of their reasonable concerns about the effects of the discharges, as well as evidence of how the discharges affect their recreational, aesthetic, spiritual, and cultural interests. This evidence is sufficient to establish that Doktor, Helelā, Frank, and Niheu have each suffered injuries in fact as a result of the Navy's acts. The CWA claim seeks injunctive relief prohibiting Defendants from discharging pollutants from the Facility to waters of the United States, except as authorized by permit, and it seeks civil penalties. See Third Amended Complaint at pg. 70, ¶¶ b-d. If such relief is awarded, it is likely to redress the injuries that Doktor, Helelā, Frank, and Niheu are suffering because preventing illegal discharges and requiring the remediation of past discharges are likely to allow them to utilize the affected areas again. Thus, all of the standing requirements are met. See Coastal Env't Rts., 115 F.4th at 1221.

Even viewing the evidence in the light most favorable to Defendants,[12] there are no genuine issues of material fact, and this Court concludes as a matter of law that Doktor, Helelā, Frank, and Niheu have standing to pursue the CWA claim in this case. See Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.").

Doktor, Helelā, Frank, and Niheu are all members of the Alliance. See Doktor Decl. at ¶ 29; Helelā Decl. at ¶ 32; Frank Decl. at ¶ 6; Niheu Decl. at ¶ 3. Further, the interests at stake in Plaintiffs' CWA claim are germane to the Alliance's purpose. See, e.g., Doktor Decl. at ¶ 30 ("The Alliance is dedicated to protecting the sacred wai (in English 'water') of Hawaii."); id. at ¶ 32 ("Wai Ola is a grassroots, voluntary membership organization composed of citizens that seek to protect the island water resources sacred to Native Hawaiians. We organized ourselves to address past damage and future threats posed by the Navy's Red Hill facility — including specifically to Pu`uloa and the [Aquifer].").[13] Although individual members of

[12] In considering Plaintiffs' Motion, this Court must view the record in the light most favorable to Defendants as the nonmoving party. See Harris v. Cnty. of Orange, 17 F.4th 849, 855 (9th Cir. 2021).

[13] Peter Doktor is one of the co-founders of the Alliance. See Doktor Decl. at ¶ 29.

the Alliance are participating in this action, there is no evidence in the record suggesting that the individual members' participation is **required** for either the CWA claim or the relief sought. Thus, even viewing the evidence in the light most favorable to Defendants, there are no genuine issues of material fact, and this Court concludes as a matter of law that the Alliance has standing to pursue the CWA claim in this case. See Laidlaw, 528 U.S. at 181.

Plaintiff has not presented any evidence regarding the injury in fact allegedly suffered by the other Individual Plaintiffs - Mary Maxine Kahaulelio ("Kahaulelio"), Clarence Ku Ching ("Ching"), Melodie Aduja ("Aduja"), Kim Coco Iwamoto ("Iwamoto"), Dr. Lynette Hiilani Cruz ("Dr. Cruz"), and James J. Rodrigues ("Rodrigues"). Although Plaintiffs argue "each individually named member and plaintiff [has] standing to protect Pu`uloa and Hālawa Stream from the petroleum pollution discharged by the Navy," [Pltfs.' Motion, Mem. in Supp. at 28-29,] Plaintiffs have not identified evidence to support this position. The fact that the Alliance, Doktor, Helelā, Frank, and Niheu have standing to pursue the CWA claim in this case does not automatically confer standing upon Kahaulelio, Ching, Aduja, Iwamoto, Dr. Cruz, and Rodrigues. Cf. Lewis, 518 U.S. at 358 n.6 ("standing is not dispensed in gross").

Plaintiffs' Motion is granted insofar as this Court concludes that the Alliance, Doktor, Helelā, Frank, and Niheu have standing to pursue the CWA claim in this case, but Plaintiffs' Motion is denied as to the request for a standing ruling regarding Kahaulelio, Ching, Aduja, Iwamoto, Dr. Cruz, and Rodrigues. The denial of Plaintiffs' Motion is without prejudice to Plaintiffs' introduction of evidence at trial regarding the issue of whether Kahaulelio, Ching, Aduja, Iwamoto, Dr. Cruz, and Rodrigues have standing.

II. Mootness

This Court next turns to Plaintiffs' argument that the portion of their CWA claim based on the Self-Reported Violations is not moot. See Pltfs.' Motion, Mem. in Supp. at 31-33. The CWA citizen suits provision states, in pertinent part:

> Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any citizen may commence a civil action on his own behalf –
>
> > (1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who **is alleged to be in violation** of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation . . . .

33 U.S.C. § 1365(a)(1) (emphasis added).

> Because § 1365(a)'s text requires that a defendant "be in violation" of the Act, the [Supreme] Court held that the citizen suit provision only authorizes suits to abate **ongoing** or **future** violations — it "does not permit citizen suits for wholly past violations." Gwaltney [of Smithfield, Ltd. v. Chesapeake Bay Found.], 484 U.S. [49,] 64, 108 S. Ct. 376 [(1987)]. Thus, to authorize a citizen suit, the plaintiff must allege that the defendant is in "a state of either continuous or intermittent violation" so that "a reasonable likelihood [exists] that [the defendant] will continue to pollute in the future." Id. at 57, 108 S. Ct. 376. Because of the requirement of an ongoing violation, Gwaltney recognized that mootness could upend the citizen suit while the litigation remains pending. The allegations of ongoing violations, for example, may cease to be true "because the defendant begins to comply with the Act." Id. at 66, 108 S. Ct. 376. In that circumstance, "[l]ongstanding principles of mootness . . . prevent the maintenance of suit when there is no reasonable expectation that the wrong will be repeated." Id. (simplified). Given that it's the defendant's voluntary actions which trigger mootness, the defendant's burden to prove mootness "is a heavy one." Id. (simplified). To dismiss a case as moot, "[t]he defendant must demonstrate that it is '**absolutely clear** that the allegedly wrongful behavior could not reasonably be expected to recur.'" Id. (simplified); see also id. at 69, 108 S. Ct. 376 (Scalia, J., concurring) ("When a company has violated an effluent standard or limitation, it remains, for purposes of § [1365(a)] 'in violation' of that standard or limitation so long as it has not put in place remedial measures that clearly eliminate the cause of the violation."). This heavy burden "protects defendants from the maintenance of suit under the Clean Water Act based solely on violations wholly unconnected to any present or future wrongdoing, while . . . also protect[ing] plaintiffs from defendants who seek to evade sanction by predictable protestations of repentance and reform." Id. at 66–67, 108 S. Ct. 376 (simplified). Simply put, once an ongoing

> violation's abatement is "absolutely clear," then the citizen suit becomes moot.

Coastal Env't Rts., 115 F.4th at 1222-23 (some alterations in Coastal Env't Rts.).

Plaintiffs take the position that Defendants have the burden of proving that Defendants' conduct after the filing of this action rendered moot the portion of Plaintiffs' CWA claim based on the Self-Reported Violations. See Pltfs.' Motion, Mem. in Supp. at 24. However, Defendants have not opposed Plaintiffs' Motion by seeking the dismissal of the portion of Plaintiffs' CWA claim based on the Self-Reported Violations on mootness grounds; rather, Defendants argue Plaintiffs are not entitled to summary judgment because Plaintiffs did not prove their allegations of ongoing discharge or likelihood of recurrence. See Defs.' Opp. at 11.

Had Defendants moved to dismiss on mootness grounds the portion of the CWA claim based on the Self-Reported Violations, the motion to dismiss would likely have been denied. See Laidlaw, 528 U.S. at 189 ("A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur. The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." (brackets, citations and internal

quotation marks omitted)); Coast. Env't Rts. Found., 115 F.4th at 1223 ("To dismiss a case as moot, 'the defendant must demonstrate that it is **absolutely clear** that the allegedly wrongful behavior could not reasonably be expected to recur.'" (some citations and internal quotation marks omitted) (quoting Gwaltney, 484 U.S. at 66, 108 S. Ct. 376)).

The Third Amended Complaint contains factual allegations describing the Self-Reported Violations. See Third Amended Complaint at ¶¶ 209-14 (allegations regarding the Hotel Pier discharges reported on March 17, 2020 and June 2, 2020); id. at ¶¶ 269-80 (allegations regarding the Kilo Pier discharges reported on July 16, 2021). Plaintiffs allege that, at the time the Third Amended Complaint was filed, the Navy still had not eliminated the source of the Hotel Pier discharge that started in 2020. See id. at ¶ 250. By the filing of the Third Amended Complaint, the source of the 2021 Kilo Pier discharge had been identified as corrosion in a fuel line, see id. at ¶ 277, but Plaintiffs allege that Kilo Pier was in active use, even though it has multiple areas requiring repairs, and the repairs had not been made, see id. at ¶¶ 281-84. These allegations are sufficient to plead a claim that is not moot. If Defendants had filed a motion to dismiss on mootness grounds the portion of Plaintiffs' CWA claim based on the Self-Reported Violations, Defendants would have had the heavy burden to prove that it was

"absolutely clear" that the actions and omissions that led to the Self-Reported Violations "could not reasonably be expected to recur." See Gwaltney, 484 U.S. at 66 (quotation marks and citation omitted). This Court declines to speculate whether the evidence that Defendants now present in opposition to Plaintiffs' request for summary judgment would have been sufficient to carry the burden of proof if Defendants had filed a motion to dismiss based on mootness grounds.

To the extent that Plaintiffs' Motion asks this Court to rule that the portion of their CWA claim based on the Self-Reported Violations would survive a motion to dismiss alleging mootness, this Court declines to make such a ruling because that issue is not properly before this Court at this time.

III. Whether Plaintiffs Are Entitled to Partial Summary Judgment

In the Laidlaw mootness analysis, the Supreme Court made it clear that, in contrast to a case where the defendant bears the burden to establish that the defendant's voluntary compliance renders the plaintiff's claim moot,

> in a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the "threatened injury [is] certainly impending." Whitmore v. Arkansas, 495 U. S. 149, 158 (1990) (citations and internal quotation marks omitted). Thus, in [Los Angeles v.] Lyons, . . . we held that a plaintiff lacked initial standing to seek an injunction against the enforcement of a police

> chokehold policy because he could not credibly allege that he faced a realistic threat arising from the policy. 461 U.S.[95,] 105-110 [(1983)]. Elsewhere in the opinion, however, we noted that a citywide moratorium on police chokeholds - an action that surely diminished the already slim likelihood that any particular individual would be choked by police - would not have mooted an otherwise valid claim for injunctive relief, because the moratorium by its terms was not permanent. Id., at 101. The plain lesson of these cases is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.

Laidlaw, 528 U.S. at 190 (alteration in Laidlaw).

Applying the Supreme Court's reasoning to the instant case, this Court concludes that, although Defendants would have the burden of proof in a motion to dismiss asserting mootness, because Plaintiffs' Motion seeks a summary judgment ruling on the issue of liability, Plaintiffs bear the burden of proving that the Self-Reported Violations are "'either continuous or intermittent violation[s]' so that 'a reasonable likelihood [exists] that [the defendant] will continue to pollute in the future.'" See Coastal Env't Rts., 115 F.4th at 1222 (some alterations in Coastal Env't Rts.) (quoting Gwaltney, 484 U.S. at 57, 108 S. Ct. 376).

It is undisputed that the Navy self-reported the Hotel Pier release in 2020 and the Kilo Pier releases in July 2021. See Pltfs.' CSOF, Exh. I (letter dated 7/14/21 to Roxanne Kwan

of the DOH Solid and Hazardous Waste Branch, Underground Storage Tank Section ("Kwan"), from Sherri R. Eng, Director of the Navy's Regional Environmental Department ("Eng") transmitting the Confirmed Release Notification Form regarding the Hotel Pier releases reported on 3/17/20 and 6/2/20); Cirino Decl., Exh. 9 (letter dated 7/23/21 to Kwan from Eng transmitting the Confirmed Release Notification Form regarding the Kilo Pier release reported on 6/16/21). Plaintiffs assert that the Navy's self-reports admit to "unpermitted discharges at Hotel Pier continued for at least 536 days — from March 17, 2020, to September 3, 2021" and 7 days of discharges at Kilo Pier beginning on July 16, 2021, for a total of 543 days. See Pltfs.' Motion, Mem. in Supp. at 34.

Plaintiffs have chosen to seek partial summary judgment as to discharges that occurred during a specific period before the filing of this action. In other words, the discharges at issue in Plaintiffs' Motion that are not currently occurring. Thus, in order to obtain the requested summary judgment ruling on liability, Plaintiffs must prove that there is a reasonable likelihood that the actions and omissions that led to the Self-Reported Violations will occur in the future. See Coastal Env't Rts., 115 F.4th at 1222.

Defendants present evidence that the Defuel Line believed to have caused the Hotel Pier Self-Reported Violation

"was emptied and isolated in January 2021" and has been inactive ever since. [Cirino Decl., Exh. 8 (Rogers Depo.) at 71-72.] Further, the Navy plans to permanently decommission the Defuel Line. [Id. at 72.] As previously noted, the parties agree that the Kilo Pier pipelines have been out of service since July 2021. [Pltfs.' Motion CSOF at ¶ 36; Defs.' Opp. CSOF at ¶ 36.] Defendants also present Summers's opinion that, based on his assessment of the Facility's structural integrity, there are no ongoing discharges and there is no reasonable likelihood of future discharges. See Cirino Decl., Exh. 10 (Summers Report)at 17. Further, Claudill, who assessed JBPHH's fuel system operations, agreed that there are no ongoing discharges. See Pltfs.' CSOF, Exh. AA (Claudill Report) at 7. Claudill acknowledged that there is a negligible risk of future fuel releases, but he opined that the existing safety measures in the JBPHH system "effectively reduce the likelihood and impact of any such event to the greatest extent practicable." [Id.]

Viewing the record in the light most favorable to Defendants as the nonmoving party, this Court must find that there are genuine issues of material fact as to whether there is a reasonable likelihood that the actions and omissions which led

to the Self-Reported Violations will occur in the future.[14] Plaintiffs therefore are not entitled to summary judgment on the issue of liability for the portion of the CWA claim based on the Self-Reported Violations.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Partial Summary Judgment, filed April 25, 2025, is GRANTED IN PART AND DENIED IN PART. Plaintiffs' Motion is GRANTED insofar as this Court concludes that the Alliance, Doktor, Helelā, Frank, and Niheu have standing to pursue the CWA claim in this case. Plaintiffs' Motion is DENIED in all other respects.

IT IS SO ORDERED.

[14] This Court notes that the denial of Plaintiffs' Motion is not necessarily an indication that Defendants are entitled to summary judgment. Where Defendants seek summary judgment in their favor, the record will be viewed in the light most favorable to Plaintiffs as the nonmoving party. For example, although this Order relies upon the fact that the Hotel Pier Defuel Line and the Kilo Pier pipelines are not currently in service to find a triable issue of fact, that evidence would not be as persuasive when Defendants seek summary judgment. Cf. Laidlaw, 528 U.S. at 189 ("It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant free to return to his old ways." (alterations, citations, and internal quotation marks omitted)).

DATED AT HONOLULU, HAWAII, July 31, 2025.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
Senior U.S. District Judge

WAI OLA ALLIANCE, A PUBLIC INTEREST ASSOCIATION, ET AL. VS. UNITED STATES DEPARTMENT OF THE NAVY, ET AL; CV 22-00272 LEK-RT; ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT